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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/723,508   | 11/28/2000  | Glen T. Anderson     | 680.0037USU         | 4904             |
| 7590 12/19/2003  |             |                      | EXAMINER            |                  |
| Rupa Sen<br>Avon Products Inc<br>Avon Place<br>Suffern, NY 10901 |             |                      | YU, GINA C          |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 1617                |                  |

DATE MAILED: 12/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 09/723,508             | ANDERSON, GLEN T.   |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Gina C. Yu             | 1617                |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 November 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 and 15-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 15-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 11, 2003 has been entered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-13, 15-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "substantially" in claims 1-7, 12, 13, 23, and 26-30 is a relative term, which renders the claim indefinite. The term "substantially" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1-13, 15-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rouquet et al. (US 6258345 B1) in view of LaFleur et al. (US 5658579) ("LaFleur").

Rouquet et al. describe a topical composition comprising crosslinked elastomeric organopolysiloxane and spherical polymeric particles with a particle diameter of less than 10 microns in a liquid fatty phase. See abstract. Employing each of the elastomeric organopolysiloxane and the spherical particles in the amount of 2-20 % of the total weight of the composition, is disclosed in col. 3, lines 46 – 58, which meets instant claims 11-13. Claim 16 is met by the disclosure of the additional ingredients in col. 5, lines 15 – 38. The vehicles of the composition in claim 17 and the method of using the invention in claims 18-20 are described in Examples.

Rouquet fails to teach the particle size distribution of the spherical particles.

LaFleur teaches powder compositions comprising combination of talc having specified particle size distribution. See col. 2, lines 10 – 34. The reference teaches that the talc therein comprises particles having a particle size distribution of 10 microns or less; 15 microns or less; and 20 microns or less. See instant claims 3-5, 9, 10, 24-28. The reference teaches that the invention provides improved coverage, uniformity, and natural look, which are attributed by the particle size distribution of talc. See col. 3, lines 1 – 64. As for claims 1 and 7, examiner takes the position that the prior art renders the claimed particle size distribution of 24 obvious. Based on the prior art teaching that a particle size distribution of 20 microns or less renders the said benefits, it would have been obvious to a routineer to discover a workable particle size distribution by routine experimentation.

Applicants' argument that the LaFleur talc is "coarse", and natural talc in generally have "platy structure" and thus fails to meet the instant claim limitation is not persuasive. Examiner notes that since the claim limitation reads "substantially spherical" with no specific disclosure by applicants to indicate what the breath of the sphericalness is necessary to meet the instant claim, it is difficult to determine whether the "coarse" talc used in the LaFleur is outside the scope of the present invention. However, examiner notes that LaFleur in fact teaches combining talc having different sizes and types (treated and untreated talc) to produce enhanced coverage of skin defects. Furthermore, applicants refer to talc as a "substantially" spherical particles which are suitable for the present invention. There is no disclosure in applicants' disclosure as to how applicants' talc is different from talc that is conventionally used in cosmetic art. Thus, examiner views that the talc combination of LaFleur meets the instant claim limitation. Furthermore, examiner asserts that the limitation is met also because the motivation to use spherical particles for cosmetic powder is obviously supplied by the teaching in Rouquet, which specifically employs spherical particles.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the composition of Rouquet by adding the talc particles having specific particle size distributions as suggested by LaFleur because of the expectation of successfully producing cosmetic compositions that provide improved coverage, uniformity, and natural look to the skin. Nothing nonobvious or unexpected is seen in using conventional cosmetic ingredients as suggested by the prior arts for the known purposes.

2. Claims 7, 11-13, 15-20, 25, 29, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable Nakamura et al. (US 5853711) ("Nakamura") in view of Abe et al. (US 5989510) ("Abe").

Nakamura discloses water-in-oil type emulsions comprising crosslinked organopolysiloxane elastomer spherical powder (Torayfil 505C or 506C) having an average particle size of 2-5 microns and silica powder (Aerosil R813 or R972) having an average particle size of not more than 2 microns. See col. 3, lines 1-20; Examples. See instant claims 7, 15. Example I-7 is an emulsion containing the organopolysiloxane elastomer spherical powder, silica, and octylmethoxycinnamate (a UV screening agent). See instant claims 16-20.

Nakamura fails to teach the particle size distribution of silica powder.

Abe teaches granular amorphous silica particles which are spherical and have uniform particle size distribution and filtering property. See col. 2, lines 35-23; col. 6, lines 21 – 50; col. 10, lines 28 - 40. The reference teaches that the particle size distribution is not greater than 2 and particularly not greater than 1.6. See col. 6, lines 21 – 43. The reference also teaches that amorphous silica is used in cosmetics such as powder foundation, paste-like foundation, cream, etc. See col. 11, lines 16- 29. The reference teaches that the method of producing the product efficiently and cheaply. See col. 2, line 28 – 32.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have substituted the silica in Nakamura with the Abe amorphous silica particles having good sphericalness and uniform size distribution as motivated by the reference because of an expectation of successfully producing a

cosmetic composition with a good filtering agent. The skilled artisan would obviously have been motivated to employ the Abe silica because of the expectation that the prior art is cost efficient.

***Response to Arguments***

Applicant's arguments filed November 11, 2003 have been fully considered but they are not persuasive. See above rejection Rougeut in view of LaFleur for details.

***Conclusion***

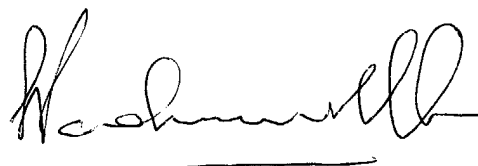
No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 703-308-3951.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 703-305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Gina C. Yu  
Patent Examiner  
December 15, 2003



**SREENI PADMANABHAN  
SUPERVISORY PATENT EXAMINER**

12/15/03